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THE LIFE UNDERWRITERS ASSOCIATION OF CANADA
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TO: THE ONTARIO COMMITTEE ON TAXATION

FROM: THE LIFE UNDERWRITERS ASSOCIATION OF CANADA

RE: THE SUCCESSION DUTY ACT R.S.O. 1960 C386

BACKGROUND INFORMATION

1. The Life Underwriters Association of Canada is the professional Association of life insurance agents. The Association was founded in 1906 and throughout its history has carried out a program of activities designed to improve the training, education and ethical practices of its members so that the insurance buying public will have the benefit of professional life insurance service from full time career life underwriters. The Association has approximately 11,800 members across Canada which is about 70% of all licensed life insurance agents. This memorandum submitted on behalf of the Association's 4850 members in the province of Ontario was approved by the Association's board of directors on January 15, 1964.

2. The work of life underwriters brings them into constant touch with estate matters and succession duty problems. Thus, the Association has a special background of experience regarding the Ontario Succession Duty Act particularly with respect to life insurance.

3. The Ontario Succession Duty Act has been subject to many piecemeal amendments over a long period of years. This has resulted in the Act becoming complex and difficult to understand. It is generally recognized that there should be a complete revision and simplification of the statute. The Association therefore confines its submission to four matters which are sufficiently critical for estates and beneficiaries to warrant immediate attention even before a general revision of the whole statute can be undertaken.

SUBMISSIONS

1. IT IS SUBMITTED THAT OWNERSHIP SHOULD DETERMINE WHEN LIFE INSURANCE PROCEEDS PAYABLE ON DEATH SHOULD BE INCLUDED IN THE VALUE OF AN ESTATE FOR SUCCESSION DUTY PURPOSES.

(a) Existing Premium Payment Test Is Unrealistic. Life insurance proceeds payable on death should form part of a person's dutiable estate if he owned the policy on his life at the time of his death. However, under the present Ontario Succession Duty Act the taxation of life insurance proceeds is determined on the basis of who paid the premiums. This is unrealistic.

The situation becomes even more unrealistic and confused when the existing premium payment test is applied to cases where the owner of the policy and the person whose life is insured are separate individuals. The solution is to use ownership as the basis for determining taxability and thus treat life insurance on the same basis as other forms of property.

(b) The Owner Of A Life Insurance Policy Is The Only Person Who Can Deal With The Policy. It is the owner of a life insurance policy, not the person whose life is insured, who has all the rights of ownership. The owner can, without the concurrence of the person whose life is insured, designate beneficiaries, surrender the policy, pledge it for a loan, sell it, or give it away.

It runs counter to the basic principles of law for the Succession Duty Act to decree in effect that on the death of a person whose life is insured by a policy owned by another, the deceased is conferring a benefit on the beneficiary. The deceased in these circumstances has no power to dispose of the proceeds because he owns no part of the policy. The deceased's life is simply the subject matter of the insurance in the same way as a building may be the subject matter of fire insurance.

If the deceased did in fact pay any premiums during a specified period prior to his death then, of course, the amount of such premiums should be treated as inter vivos gifts and included in aggregate value for duty purposes but this is an entirely separate matter from the proceeds of the policy which can be related only to ownership.

(c) Adoption Of The Ownership Test For Taxation Of Life Insurance Proceeds Would Remove The Existing Discrimination Against Life Insurance. The broad general principle that underlies succession duty is that the transmission of property on death is dutiable only if it was owned by the deceased at the time of his death (subject to such exceptions, for example, as those for property disposed of as donatio mortis causa and as inter vivos gifts made within a specified period before death).

Life insurance should be subject to this same principle of taxation that applies to other forms of property. Therefore, the adoption of the ownership test for levying succession duty on life insurance proceeds would remove the discrimination that now exists against life insurance under the Ontario Succession Duty Act.

(d) Existing Premium Payment Test Is Difficult To Administer Equitably. Ownership Is Easy To Determine. The present law places a difficult burden upon personal representatives and others who may be required to produce evidence of who paid life insurance premiums over a long period of years. Insurance company records merely indicate whether or not premiums have been paid, with no record of who made the payments. Receipts and cancelled cheques are not normally retained by individuals for more than a few years at the most.

The present premium payment test has become even less realistic since the revision of the life Part of the Ontario Insurance Act on July 1, 1962 which greatly extends the statutory right to pay premiums. Section 148 (1) of the Ontario Insurance Act provides that "Except in the case of group insurance,

an assignee of a contract, a beneficiary or a person acting on behalf of one of them or of the insured may pay any premium that the insured is entitled to pay". Payment of premiums may be dictated by many and diverse considerations totally unrelated to ownership.

Ownership of a policy at time of death is a simpler matter to determine than the present requirements for tracing the history of premium payments over the years.

(e) Ownership Principle Will Achieve Uniformity With Federal Estate Tax Act. The ownership principle for life insurance was adopted by the federal Estate Tax Act which has now been in force for five years and is working out satisfactorily in practice. Our Association strongly urges that this principle now be adopted in the Ontario Succession Duty Act so as to achieve greater uniformity with the federal Act and remove the existing discrimination against life insurance as a form of property.

2. IT IS SUBMITTED THAT ONLY INTER VIVOS GIFTS MADE WITHIN THREE YEARS IMMEDIATELY PRIOR TO DEATH SHOULD BE INCLUDED IN THE VALUE OF AN ESTATE FOR SUCCESSION DUTY PURPOSES.

(a) Three Year Rule Applies Under Federal Estate Tax Act. The existing federal Estate Tax Act and the previous federal Succession Duty Act both tax inter vivos gifts made within three years prior to death. The Ontario Succession Duty Act applies a five year period to inter vivos gifts. This difference creates an unnecessary complication and inequality of treatment for estates that are subject to the provincial and federal taxing statutes.

(b) Three Year Rule Applies Under British Columbia Succession Duty Act. During 1963 the province of British Columbia re-entered the succession duty field. It is significant that while the British Columbia legislation follows the basic pattern of the Ontario Act, it does depart from the Ontario five year rule for inter vivos gifts and the three year rule has been adopted

in line with the federal Act.

(c) Uniformity Will Assist Beneficiaries And Executors Of Estates. Our Association urges that the three year rule for inter vivos gifts be adopted in Ontario as a desirable step in the direction of uniformity which would assist beneficiaries and those involved in the planning and administration of estates.

3. IT IS SUBMITTED THAT WHEN PROPERTY IS OWNED JOINTLY BY THE DECEASED AND ANOTHER PERSON OR PERSONS, ONLY THE BENEFICIAL INTEREST ARISING OR ACCRUING ON DEATH SHOULD BE DUTIABLE AS PART OF THE ESTATE OF THE DECEASED.

(a) Federal Estate Tax Act Recognizes That Joint Owners Have Legal Title To Equal Shares. The law has long recognized the principle of joint ownership by which two or more owners of property are deemed to own it in equal shares unless the legal title indicates the property is owned in some other proportion. Thus, in the common situation where a home is registered in the joint names of husband and wife, each spouse has in law an undivided one half interest in the property. When one spouse dies, his or her one half interest passes automatically to the survivor and should be taxed accordingly. The federal Estate Tax Act recognizes this principle of law and taxes only the beneficial interest passing on death in the case of jointly owned property.

(b) Ontario Succession Duty Act Imposes Difficult Burden Of Determining Actual Contributions By Each Joint Owner. The present Ontario Succession Duty Act disregards the basic principle of law and it is necessary to ascertain the extent of the actual contribution of each joint owner to the jointly owned property. Often the property is acquired many years before death and the requirement that executors and beneficiaries verify the details of such financial transactions over a long period of years is a difficult and often impossible burden to impose.

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This burden would be lifted if the Ontario Succession Duty Act were amended to follow the legal fact of "beneficial interest accruing or arising on death".

(c) Uniformity Would Eliminate Confusion And Simplify Administration. Such amendment would ensure uniform treatment under both the federal Estate Tax Act and the Ontario Succession Duty Act for a widely used form of property ownership. This would eliminate much confusion for the public and it would simplify administration for the provincial succession duty department as well as for executors and administrators.

4. IT IS SUBMITTED THAT LIFE INSURANCE PROCEEDS PAYABLE ON THE DEATH OF THE LIFE INSURED SHOULD BE PAYABLE WITHOUT THE CONSENT OF THE PROVINCIAL TREASURER UP TO AT LEAST $11,500 BY AN INSURER PROVIDED SUCH PAYMENTS ARE REPORTED TO THE SUCCESSION DUTY DEPARTMENT.

(a) Consent System Is Unnecessary For Life Insurance Proceeds. The experience in some jurisdictions indicates that a strong case can be made for dispensing with the consent system entirely provided insurers are required to report to the Provincial Treasurer when any payment of insurance proceeds is made. However, payments of life insurance proceeds without consent up to at least $11,500 should be permitted to conform with the well established procedure under the federal Estate Tax Act.

(b) Amendments In 1962 Did Not Go Far Enough. The 1962 amendments to the Ontario Succession Duty Act increased from $2500 to $5000 the amount of insurance proceeds which an insurer can pay to a widow without consent of the Provincial Treasurer. The limit is still $2500 for other beneficiaries. This change answers to some degree the former criticism that the amount was inadequate to provide cash for last expenses, other debts and current living expenses while the estate is being administrated and succession duty releases obtained.

(c) Consent System Seriously Delays The Settlement Of Life Insurance Claims. There still remains the more serious problem that the existing consent system prevents the settlement of a large number of life insurance claims in accordance with the terms of the contracts which call for payment on death. Insurance companies are forced to postpone the carrying out of their contractual obligations over long periods of time to the extent of many millions of dollars. The majority of estates are not subject to succession duty yet the settlement of life insurance claims is often delayed many months by the consent requirements.

(d) Federal Estate Tax Act Permits Payment Of Life Insurance Proceeds Without Consent Up To $11,500. In the year 1962 the average size of life insurance policies purchased in Canada was $6730. Policies of $10,000 and more are commonplace. Because most policies also include accumulation of dividends it was decided to establish $11,500 as the amount of insurance that could be paid without consent when the federal Estate Tax Act was enacted. It is submitted that the Ontario Succession Duty Act should include corresponding provisions for payment of insurance proceeds without consent.

(e) Possibility of Losing Revenue Is Remote. The possibility of loss of revenue if this proposal is adopted appears to be remote and would be outweighed by the saving in administrative expense and by removing the ill will of the public who cannot accept the propriety of long delays particularly in estates where no duty is payable. The existing provisions for payment up to $11,500 under the federal Estate Tax Act have been in effect for five years and do not appear to have resulted in any loss of revenue.

Respectfully submitted,

THE LIFE UNDERWRITERS ASSOCIATION OF CANADA

January 15, 1964